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OF NEW YORK, INC.**

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MEMO ENDORSED

October 17, 2017

BY ECF and Email

The Honorable Valerie E. Caproni
United States District Judge
Southern District of New York
40 Foley Square
New York, NY 10007

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**Re: *United States v. Kevin Johnson*
15 Cr. 565 (VEC)**

Dear Judge Caproni:

We received the Court's Order filed October 16, 2017 [Dkt.152] and have refiled the specified Exhibits as directed [Dkt.153].

We also write to seek the Court's guidance regarding the protective order [Dkt.69]. While it is indisputable that the Order unsealed the docket, we are uncertain as to the current status of the protective order. We have consulted with the Government, who consent to this request. The protective order necessarily carries with it the non-disclosure agreements, and all associated compliance mechanisms, including our obligations as custodians of the source to the Office of Chief Medical Examiner (OCME) Forensic Statistical Tool (FST).

The protective order is wholly inconsistent with the now-open docket. The Court has rightly concluded that these matters should now be made public. As noted in the Order, the OCME no longer opposes vacating the protective order [Dkt.148]. As the OCME itself states:

[i]t has become clear that it is now time for the OCME to be able to point publicly to specific aspects of the code as necessary to further clarify the validity not only of the FST itself but also of the computer code that implements the program. *See id.*

ProPublica, respected journalists, also seek to vacate the protective order [Dkt.138]. The Government does not oppose their motion to intervene [Dkt.146].

As it now stands, however, non-disclosure signatories cannot safely advise clients, journalists, or jurists for fear of breaching the non-disclosure agreement. Moreover, if the protective order does survive, so do the litany of constitutional issues laid out in our Motion to Vacate the Protective

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Order [Dkt.147].

Therefore, on the express consent of the OCME, who is the party in interest, because it is in the public interest at large, and because it would otherwise be inconsistent with the Court's order of October 16, 2017, we respectfully move that the protective order in this case be vacated.

Thank you for considering this request.

Respectfully Submitted,



Christopher A. Flood



Sylvie Levine
Counsel for Mr. Kevin Johnson

cc: Sebastian Swett
Assistant United States Attorney (by ECF)

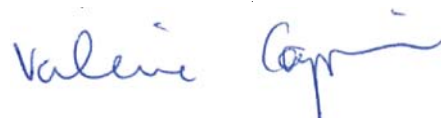
Florence Hutner
General Counsel
New York City
Office of Chief Medical Examiner (by Email)

Media Freedom and Information Access Clinic
By:
David A. Shulz (by Email)

Hannah Bloch-Wehba (by Email)

Application GRANTED. IT IS HEREBY
ORDERED that the Protective Order is vacated.

SO ORDERED.



10/18/17

HON. VALERIE CAPRONI
UNITED STATES DISTRICT JUDGE